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A DEFINITION OF SOVEREIGNTY

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The consideration of a subject like "Sovereignty" leads a man, who has had little cause to study such questions in the abstract, into an unwonted field of thought, where he finds himself involved in a maze of theories, which, in their application at least, are confusing on account of the different premises and concepts upon which they rest.

I realize that it is more or less presumptuous for a layman in political science to enter this field of philosophy with the purpose of contributing anything to the general knowledge of a subject, into which many of those here present have gone much further and much deeper than I have been or can ever expect to go in the formulation and application of a correct definition. Having, however, in a moment of unwisdom set my hand to the plow I will not look back, nor will I offer apology for what I have to say on the ground that it will be the utterance of inexperience, warranted as I would be in making such a plea.

The thing, which has especially impressed me in my examination of the writings of publicists on the nature and sphere of sovereignty, is the artificial character of the theories, which have been advanced, and of the methods of treatment, which have been generally employed. This seems to be true whether the writer is dealing with sovereignty alone or as a part of a theory covering law, jurisprudence, or political institutions. Frequently too a theory is founded on a legal fiction, which will not stand the test of fact.

Apparently the process of thought adopted in many cases by the advocate of a theory is to formulate the theory first and then to seek out historical facts to support his preconceived ideas, unduly omitting facts in opposition or moulding them to meet his views.

To one, whose experience has been in the practical rather than the theoretical field of law, such a method of theorizing appears to be highly unscientific and prejudicial to the truth. Heaven knows that the science of law, in theory and in practice, is already sufficiently burdened with a reputation for relying upon fictions, so that those, who teach and prac-

tice it, ought to be specially careful to avoid artificial premises in the construction of theories.

We live in a utilitarian age, when the actual and practical dominate human thought. Men today want a theory which works, which stands the test when applied to facts, which is not perforated with exceptions. Theories of that sort win the approbation of mankind, while the old type of theory, however adroitly reasoned, is viewed with suspicion. It seems to me that we ought to eliminate fine-spun logic and attenuated argument, those shreds of mediaeval philosophy which still persist and tincture modern thought with assumption and unreality. We should see in the popular reception of Pragmatism the spirit of the times and deal with things as they are rather than with things as they might be.

Following the normal course of thought then (and I mean by "normal," unrestricted by limitations imposed by a particular type of theory), we may begin the present discussion with the proposition that a political energy or a political institution finds its origin in such causes as the association of man with man, the intellectual development of an age or race, the environment of a particular community. So too the concept of a political energy or a political institution should be based primarily upon attributes founded in nature rather than upon those founded in theory, attributes, which can be applied universally to social conditions regardless of the state of social development or the recognition of law as a political force.

No doubt it will be charged that the foregoing method of treatment results in confusing sociological and legal theories and that their spheres should be kept distinct. From the view point of the specialist this may be true, but it can in no way affect the value of a theory to the practical thinker, who in his search for the truth follows the facts into whatever path they may lead him.

To illustrate in connection with our present subject: It seems to me of very little value to assert as a condition precedent that Sovereignty shall be considered as a concept of law (I do not here differentiate between constitutional and international law), that it is a legal creature functioning through law and is at the same time a source of law. I presume that it is too great regard for practicality, which prevents an appreciation of the logic of this proposition; if so, I plead guilty. It reminds me very forcibly of the old riddle, "What would be the result if a snake began to swallow his own tail and kept on swallowing?" How a thing can produce and at the same time be the offspring of another thing is a problem, which I think would have vexed the Schoolmen of eight

centuries ago, those philosophic gymnasts who delighted in propounding and discussing unanswerable questions.

Enough has been said to indicate that, in a consideration of sovereignty, no good purpose is served, in my opinion, by declaring that it is a subject which belongs to a particular branch of political science. To do so seems to me to place an arbitrary limitation upon its sphere of operation, a limitation, which, until it has been established by facts, is entirely hypothetical. I do not say that such a limitation does not exist. It may exist. But, if it does exist, let it be proven rather than assumed as a basic hypothesis, to which the facts must be made to conform.

It seems to me that the practical mode of considering a subject like the present one is to determine its nature from political phenomena, to seek for its natural rather than artificial qualities, to widen or contract its sphere of exercise so that it may apply generally as to time and place—in a word, to give to sovereignty a meaning, which accounts for certain manifestations in a politically organized community which would otherwise appear to deny the normal rule of cause and effect.

In pursuing this method it is evident that simplicity of form in communities and political institutions is preferable because of the facility of analysis; and it is also evident that this simplicity will be found in the barbarous state of human society. Necessarily this leads us into the domain of sociology.

A primitive community originates in the gregarious impulse inherent in human nature rather than from any process of reasoning by the individuals, who compose it. It is the physical, not the intellectual, in savages, which causes them to associate. Animal passions, fear, and the chances of birth and situation are among the primary causes. Later, as a community increases in numbers and civilization, there is evidenced an energy, which with more or less tenacity keeps the members of the community united. This energy, which is in fact manifest from almost the moment of origin, is the controlling factor in a community giving to it continuance and a rudimentary political organization.

Like all that pertains to human society in a barbarous state this energy is physical; it is only in the higher stages of development that man permits his conduct to be affected by rational, moral and religious influences. This physical energy of the savage is necessarily strength of body. No other human force is known to the physical man. As in the case of gregarious animals a savage man, because of superior muscular development and vigor, compels his fellows in a community to submit to his will either by the employment of force or from fear of physical

punishment. He commands and is obeyed because he can compel obedience.

This fundamental energy, which is the binding force in the most primitive forms of society and continues its functions, though modified by intellectual influences, in the higher types of communities, seems to me to be entitled to the term "sovereignty." We think of sovereignty—and I mean by "we" mankind in general—as the supreme and vital element in a political state, without which it cannot exist in an organized form or possess those other attributes, which enter into the concept of a state.

I do not ignore the fact that there has been a marked change in the idea of sovereignty held by publicists who have written since Bodin advanced his theory in the sixteenth century, a change due, I believe, largely to the influence of legalism and its increasing popularity during the eighteenth and nineteenth centuries. Change, however, is not necessarily progress. Indeed, not infrequently the earlier thinkers seem to me to have come nearer the truth being unhampered by conventions and uninfluenced by the opinions of others. To discuss the merits of the different concepts of sovereignty which have been advanced in the last three hundred years would lead us unavoidably into a consideration of the political and legal theories of their authors, a field of investigation far too extensive to enter at the present time.

It will have to suffice for the purpose of this discussion to pursue an independent line of thought without reference to a particular theory and without criticism of the works of publicists, however authoritative such works have become.

Following, therefore, the proposed method of analysis by confining the present consideration to small communities with simple institutions and applying the suggested concept of sovereignty to the phenomena of life in such communities, it is apparent that the individual, who has the bodily strength to impose his will upon all the other members of the community, possesses the supreme political authority. View it from what point you will, give to the intellect, the emotions, the conscience, their highest place in influencing human conduct, and you must come back to the naked fact, confirmed by history as well as by reason, that political mastery depends upon the physical power to coerce.

I cannot attempt here to trace the phenomena of political existence from those of the primitive tribal community up through those of the more complex types, which have developed patriarchal, patriarchal-tribal, monarchic, democratic, and representative systems of govern-

ment, and show how in each type physical might continues to be the fundamental energy in spite of the restrictions which art has attempted to place upon it.¹

This I know can be done, but I must ask you now to assume it as a fact, and pass to the consideration of a question, which has reasonably been asked by those who are opposed to the idea that the essence of sovereignty is physical power.

The question is this: Should not the term "sovereignty" be applied to the supreme *will* in a political state rather than to the supreme *power*?

This is manifestly a fair question, and one, which disciples of that school of philosophy, which considers law to be as all-pervading in human society as electricity is in nature, will answer affirmatively. Sovereignty from their point of view could hardly be considered anything other than the supreme will in a state. Supreme will, when declared, becomes law; and law thus becomes dominant in the state being the only channel through which sovereignty can find expression.

While appreciating the force of this concept of sovereignty, and understanding, I believe, the influence of the word "law" upon those who advocate it, the weakness of the definition of sovereignty as "will" lies, in my opinion, in the artificial type of supremacy which it is necessary to assume if it is adopted. What is it, which makes a particular will supreme in a state, whether it be considered the will of a person, a body of persons, or the state as a juristic person? Can it be anything in fact other than the power of the one, who wills, to compel obedience? I know that it may be asserted that supremacy of will depends upon legal right, but who can proclaim a legal right except the supreme will? You see we get back to the old question of the snake swallowing his own tail the moment we introduce law as a source of real superiority. But, if law is not the source, there appears none other in human society save physical might.

This conception of the supremacy of brute force in a state may appear to be a barbarous doctrine distinctly out of harmony with the modern spirit, which exalts law above every force in society and considers all political phenomena to be produced by it or subject to it. "The reign of law" is an agreeable phrase to the present

¹An application of this concept of sovereignty to various forms of government and the development of the theory of a real and an artificial (legally created) sovereignty in a state will be found in the writer's "Notes on Sovereignty in a State," which were published in the *American Journal of International Law* (1907), vol. i, pp. 105-128, 297-320.

generation and the idea, which it conveys, is given a preëminent place in modern thought. On the other hand, the suggestion that physical strength dominates law and right in the political life of the world is displeasing, if not abhorrent, to the moralist as well as the legalist of the present day. But, however strong may be the prejudice in favor of law as a positive force, it appears to me impossible to avoid the conclusion that the legal right to exercise the supreme will over a community fails to confer upon its legal possessor a real supremacy, unless the possessor of the physical power permits such exercise. When that permission is granted, either positively or passively, is not the will of the possessor of the physical power actually supreme, whatever may be the legal fiction as to the right to exercise the supreme will?

It is axiomatic that will must be exercised in every act of sovereignty, however it is defined, but will cannot be exercised without the consent of the one possessing the physical power to choose between obedience and disobedience to such will. Consent itself is an act of will. The consent of the physical master is an act of the will, but the will of the master. Whatever may be the legal *status* of the one who wills, the supremacy in fact rests with the one who is the stronger physically. That a man or a body of men in a community can possess the supreme might and not possess the supreme will appears to me to be paradoxical.

Thus, whether the supreme political authority is considered to be a manifestation of will or a manifestation of strength, the proposition stands that such authority belongs to the possessor of the superior physical might. To me the word "sovereignty" conveys an idea of completeness, of sufficiency, of unrestricted domination, of an authority from which there can be no appeal, so that I cannot dissociate supremacy of will from the power to compel obedience.

I have no doubt that some of those present think that I have failed to give proper value to the concept of a political state as a juristic person and that what is meant in legal theory by supreme will is the supreme will of the state, and not the will of an individual or a body of individuals within the state. I realize that, from the point of view of the legalist, who would subject all political phenomena, even the state itself, to legal formulæ, this idea is in harmony with the general theory which he advocates.

With neither the idea nor the theory am I in accord. To hold the view that a state is a creation of law rather than a product evolved from a primitive community through a process of political unification by means of human might appears to me to deny the results of actual experience and

to adopt a fiction. The value of this assumption to legal theory is clear; in fact, if the theory of the paramount authority of law in human affairs is accepted, the idea seems indispensable; but applied to the proposition that a community as a political organism is the resultant of an evolution through natural causes it finds no place until by the exercise of sovereignty a legal system has come into operation and law has impressed new and more or less artificial relations upon the members of the community.

An organized political society, the result of natural development from the primitive community, may, even before legality becomes manifest, be said to possess supreme power and supreme will, because somewhere among its members there is an individual or a body of individuals who has the physical power to impose his will or their collective will upon all the persons and over all the territory of the community. Whether the individual or the body of individuals acts directly or through an agent his announced will becomes the law of the community. If the possessor of the supreme power chooses to give the state a specific legal character and to declare it to have certain legal attributes, such character and attributes exist so far as the members of the state are concerned; but clearly their existence is legal rather than actual, a product of the human mind rather than of nature.

Eliminating the idea of corporate possession, because it appears to be a legal proposition and not a fact, it is evident that the *locus* of the sovereignty in a state can only be truly determined by the exercise of physical power between opposing individuals or factions, that is, by matching strength against strength. Such a contest in a small community of savages might be a single combat, but in large communities it would be a civil war or else, if by threat of violence, a bloodless revolution. Thus the possession of the sovereignty in England was manifested when the lords and barons compelled King John to sign Magna Charta, when the people during the Puritan revolution wrested the government from the nobility, and when they again asserted their supreme political authority in the revolution of 1688. So in France the overthrow of the monarchy in 1792 and the destruction of the legal prerogatives of the aristocracy and clergy demonstrated that the French people possessed the physical strength to compel obedience to their will.

The Civil War in the United States is another historical event, in which the *locus* of the sovereignty was conclusively shown through an exercise of force. The method of determining in whom the sovereignty of the Federal State legally rested was provided in the organic law by

furnishing a means of amending it. This method was ignored and those possessing the superior physical power established their supreme political authority by force. The legal right of a State to secede from the Union was tested, not by the constitutional process but by a resort to brute strength. The right of secession was denied by the possessors of the superior might and they manifested their collective will by compelling submission on the part of those who asserted the right. The denial of the right was never incorporated into the organic law by the process of legislation, but it was none the less established by an exercise of sovereignty that secession was illegal. And this act demonstrated the actual rather than the legal *locus* of the sovereignty in the United States.

From the point of view of those, who maintain that sovereignty is the supreme will of the state as a juristic person and that it is not the collective physical power of a defined or undefined body of individuals within the state sufficiently strong to compel obedience, the operation of the sovereignty, when a civil war is in progress, seems to be difficult of explanation. I assume that as plausible a theory as any is that the sovereignty of the state is, in its legislative operation, suspended until such time as domestic peace and order are restored and enacted law resumes its function in the regulation of human conduct in the state. This theory, however, does not remove entirely the difficulties of the situation. It appears to deny the supremacy of the legally sovereign will during the continuance of the war, for the act of suspension, if compulsory, disproves its supremacy. Remembering that the theory is that sovereignty is only manifested through law, one may pertinently ask: What laws continue to be in force during the period of domestic strife? What legislative authority exists? Does not the right to legislate depend upon the power to enforce? Is the mental power to will or the physical power to coerce the controlling factor in determining what is law in fact?

Viewing the situation from the natural in contradistinction to the legal standpoint, the physical strength of a faction, a party or a body of individuals in a state must be superior, and in asserting itself in actual conflict with those, who deny such superiority, it furnishes conclusive evidence of its physical superiority, and by its exercise compels the acknowledgment that the collective will of its possessors is supreme.

My proposition, however primitive in origin it may seem, is this: That civil war, whether it is termed an insurrection, a rebellion or a revolution, is the practical process, by which the possession of the sovereignty in a state is determined as a fact, and that through no operation of law in time of peace can such possession be actually determined.

It may be assumed as a legal principle that sovereignty is possessed by all the individuals in a state considered as a corporate body, but domestic strife with the resulting entire or partial suspension of the operation of enacted law disproves the truth of the assumption. It is a fiction, which becomes evident the instant one party in a state denies by physical resistance that another party, which has been in control of the machinery of government, can compel obedience to enacted law. In one or the other party the actual sovereignty will be shown to reside by the outcome of the conflict.

When, however, domestic tranquillity prevails in a state and the physical energies of its members are turned into peaceful channels, the actual possession of the sovereignty cannot be subjected to the ultimate test. The physical might of one party cannot be measured with the physical might of another party without destroying that desirable condition of a state at peace, which is conducive to its industrial expansion and the acquisition of knowledge and wealth by its people. In these circumstances an artificial method of determining the *locus* of the sovereignty becomes imperative, as there must be some means of selecting agents to announce and put into force rules of conduct, if political organization, public safety and private rights are to be preserved.

In the political systems of modern civilized states the method adopted, with but few exceptions, is to recognize the authority of majorities. It is generally accepted that "majority rule" is founded on the precept, that men are politically equal, but a critical consideration of the idea in the light of facts will, I think, convince you that it is based upon the assumption that each individual, who is by law granted political rights, is the physical equal of every other individual possessing similar rights. Sequent to this assumption is the further assumption that the majority of the individuals so empowered are possessed of the superior physical might in the state, that is, of the sovereignty.

Until recent years the limitation of the suffrage to males, who had attained manhood and presumably full muscular vigor, carried out in a marked degree the idea that physical qualifications were essential to a participation in the declaration of the will of those possessing the sovereignty in a state. The introduction of female suffrage into certain political systems (which there is not time to consider here) rests upon entirely different principles, which are fundamentally moral; nevertheless its introduction gives further evidence of the tendency in modern thought to supplant the more natural standards with those which are artificial.

History proves to us that the form of government in a state is usually

determined by force, though in some instances by legal processes. In the former case a minority of the individuals in a state may and frequently does decide the form of government. In the latter case the majority of individuals being presumed to possess the power to compel obedience, their expressed will controls. Thus the organic law of a state springs from a natural source or from an artificial source, as the physical power is manifested in fact or is assumed to be possessed.

In a state, where the form of government is representative republican, the legal presumption, that the sovereignty is possessed by a majority of an electorate, which is limited in numbers by legally defined qualifications, is further shown by the choice of representatives and the delegation to them of powers to perform the necessary functions of government. That these chosen representatives are the agents of the actual possessors of the sovereignty is manifestly presumptive. It may or may not be true in fact. The law in times of domestic peace declares it to be true, but a successful rebellion may prove conclusively the falsity of the presumption by depriving the legally chosen representatives of the governmental authority delegated to them, while, on the other hand, an unsuccessful rebellion may convert the presumption into an established fact.

In the case of successful resistance to an existing government the practical result is that the law of its creation is repealed by force; the real possession of the sovereignty takes the place of the artificial possession; actuality supplants legality; fact destroys fiction.

But, whether it is a time of internal strife, when the actual possession of the sovereignty is manifest, or a time of internal peace, when the majority of an electorate are presumed to possess the sovereignty, the fact remains that a large number of the members of a state cannot exercise their individual wills since they are opposed to the collective will of the possessors of the sovereignty. Those who are in opposition must either obey, because of the superior strength of the dominant body or because of their voluntary submission to enacted law, or else they must put the question of the possession of the sovereignty to the test by forcibly resisting the declared will of those who claim to have the superior power.

If the foregoing reasoning is correct—and I wish to say again that it seems to be a brutal doctrine hostile to the popular idea of the supremacy of law in the civilized world—the following propositions are true; that all the individuals composing a state do not share in the possession of the sovereignty; that it is located *actually* in the body of individuals

determined or undetermined, who possess the physical might to compel obedience to their collective will; and that it is located *legally* in a majority of a limited electorate in a republic, or, in other types of states, in a special group of individuals designated by law.

As to the theory that a state as a juristic person possesses the sovereignty, it has to be assumed that it functions through majorities, but it must be understood that majorities are, when introduced into a political system, creations of law, and that they are not inherent in human society. To ignore a minority, which may be stronger physically than a majority and thereby able to put into operation its will in spite of the announced will of the majority, is to place legal supremacy over actual supremacy, to clothe the impotent with a fictitious power. It is the exaltation of law over physical might by crediting law with a superiority which it does not and cannot possess in fact.

It comes to this then, that a state, when viewed from within, certainly does not as an entirety possess the sovereignty, though it is possessed by certain individuals who are within the state.

Viewed from outside the state, however, a state, as I have said, may be considered to possess the sovereignty since its possession is within the limits of the state. It seems to me, therefore, that in a consideration of the relations between states it is not improper to speak of a state "possessing sovereignty" or to use the expression "a sovereign state."

The relations between states form the province of international law, and it is customary to speak of a state in its character as a subject of international law as "sovereign and independent." Independence is a condition essential to a state's legal equality with other states in the family of nations.

But what is this condition of independence other than a condition in which there exists among the members of a state a body of individuals who have the power to make their collective will supreme within the state? Independence is clearly but an external manifestation of sovereignty; that is, the possession of sovereignty within a state confers upon it internationally a legal condition of independence.

I know that it has been denied that sovereignty is a proper term in international law, and that it is asserted that it belongs exclusively to constitutional law, and that the fundamental attribute of statehood from the external point of view is independence alone. I would like to discuss here the question as to whether independence is a condition in fact or one created by legal presumption, but there is not time to do so. I can only

say that I do not at all agree with those who refuse to consider sovereignty a term of international law.

In the first place, since the condition of independence is a manifestation of the possession of sovereignty within a state, and, conversely, dependence is a condition which shows that sovereignty is not possessed within a so-called state, I can see no good reason for avoiding a normal process of thought by attempting to separate two ideas which are manifestly interdependent. In fact I do not see how this can be done logically without assuming that sovereignty is a creature of law and that law is limited to the definition of John Austin that it is a command by a political superior to a political inferior.

In the second place international law deals with questions which arise when the sphere of one sovereignty conflicts with the sphere of another sovereignty, that is, when the possessors of the two sovereignties claim the same field over which their wills are supreme. The natural result of such conflicting claims is war to determine which sovereignty is actual over the subject in dispute, though modern enlightened sentiment, in order to avoid the loss and suffering incident to war, seeks to settle the respective claims by judicial process. In either case, however, the question to be determined is which sovereignty is dominant over the subject of controversy.

In the third place, when there is a dispute within a state as to whether the existing government does or does not represent the real possessors of the sovereignty and the *locus* of the sovereignty is subjected to the test of civil war, it becomes necessary for a foreign government to consider in what body of individuals within the state, where the war is being waged, the sovereignty is located. Having decided this question in accordance with its judgment, it recognizes as the true agent of the possessors of the sovereignty the government established by the one or the other of the warring factions. After such recognition, if a reasonable doubt remains as to the *locus* of the sovereignty, a government may recognize the other party to the conflict as a belligerent. This recognition of belligerency permits the foreign government to regulate its conduct to the combatants by different rules from those applicable when belligerency is not recognized.

If, however, neither of the contending parties exhibit marked superiority in the conflict, so that the issue of the war is most uncertain, a foreign government may be justified in recognizing neither party as the possessor of the sovereignty, but wait to do so until one of them has established its claim by force of arms.

The decision in either of the foregoing cases as to the recognition of the governmental agents of one party or the other should depend upon the fact as to whether or not the party has established and can presumably maintain a stable government, possessing the power to perform its international obligations. Stability of government rests entirely upon the physical might to compel obedience and not upon a legal right to command, unless it is considered that "might makes right" in political affairs, a trite saying, which should not be too hastily rejected. Clearly the question is one of fact and not one of law. Who are the possessors of the sovereignty? What government represents the possessors? These are the questions which are presented to a foreign government, and upon the way in which they are answered depend the relations between the governments.

I consider it fair to ask those who deny sovereignty a place in international law the following questions: Whether the *locus* of sovereignty in a state should not be considered when a condition of civil war exists? In what manner are the spheres of conflicting sovereignties to be determined without considering their exercise and the points of interference? How in fact can independence be proved or even assumed for a state unless there is recognition of the exercise of sovereignty within the state?

The real cause of the limitation put upon the use of the term "sovereignty" seems to be, as I have already suggested, in adhering to the Austinian definition of law and in considering legal right preëminent in man's political relations. International law from the Austinian theory is not law in fact but merely a moral code. Now, if we concede that sovereignty is a creature of law and only operates through law, and law is properly defined by Austin, it is evident that sovereignty can find no place in international law. But with this idea of the sphere of international law and with the narrow definition of law I am not in sympathy since they are apparently based upon premises, which it seems to me reason denies.

It is, from my point of view, illogical to call a body of individuals "sovereign," who by law possess a right to announce and do announce their collective will in the form of public laws, when another body of individuals within the same state possess the physical power to disobey such laws without liability to punishment. As I have indicated already, the obedience of the stronger is a voluntary act on their part, not an act of those possessing the legal right to will. Manifestly the real energy is not the law, but the power to enforce it.

Whence comes the legal right to exercise sovereignty? Who utters the creative law? Would those who follow in Austin's footsteps, deny that the right comes from law, and that the law comes from the political superior, and that political superiority comes from possession of the legal right to exercise sovereignty? So we go round the circle and return to our starting point like one lost in a forest.

Let us seek another way out of the difficulty. Assume, if you cannot agree, that sovereignty is the supreme physical power in a state. Law, upon that assumption, is the announced will of the possessors of the sovereignty. Sovereignty is the energizing force behind the law. It is in no sense a creature of law nor a concept of law, since it existed before law. The legal right to announce the will of those, who possess the sovereignty, may be retained by them or delegated to agents. But such legal right, like all other legal rights, is created, continued and destroyed at the will of the possessors of the sovereignty.

There is in this theory no mystery of creator and creature united in the same concept; no endless chain of cause and effect; no seeming contradiction; no paradox to be explained. It appears to me a practical working theory. It is dependent upon the definition of sovereignty and a due recognition of the part sovereignty as so defined plays in our political and legal systems.

Briefly to recapitulate: There is in a modern political state, as in a primitive community, an irresistible energy which can control all human conduct within the state. This irresistible energy is superior physical might which has no limitations other than those inherent in human nature. This superior physical might confers upon its possessor or possessors the power to compel obedience to his or their will. This dominant will is expressed by action or by command. The supreme coercive physical power I would define as *sovereignty*; the expression of the dominant will of its possessor or possessors I would define as *law*.

Sovereignty so defined is a natural product of human association affected by the desire for its continuance. Law, in any but an artificial sense, is the mental product of the possessor of the sovereignty. Thus effective rules of human conduct (and they are the only ones worthy of consideration), whether they apply to individuals or to states, depend ultimately upon paramount human energy or sovereignty, which, though founded in nature, seems to me, not only an appropriate, but an essential, term in international law as well as in constitutional law.

In this discussion I have not attempted to introduce a novel definition of sovereignty but rather to restate an old one and apply it to modern

political conditions. I have endeavored to consider it from the practical standpoint regardless of any differentiation between political and legal theory. I have sought in a general way to test the reasonableness of the definition by applying it to political phenomena, with which we are all familiar, and by considering the relation between actuality and legal fiction.

As stated at the outset, I have been compelled to avoid a review of authorities. By following this course the consideration of the subject has been incomplete and, therefore, unsatisfactory. I realize this; and present this paper only by way of suggestion from one, who has found certain theories, which have been advanced by some of our philosophers, weakened or rendered imperfect by a concept of sovereignty, which is artificial and impracticable when applied to actual fact.